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10/032,882	10/29/2001	Sebastien Bouat	50003545 -3	8291

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EXAMINER	
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BEFORE THE BOARD OF PATENT APPEALS AND INTERFERENCES

Application Number: 10/032882
Filing Date: October 29, 2001
Appellant(s): SEBASTIEN BOUAT

Robert Popa
For Appellant

EXAMINER'S ANSWER

This is in response to the appeal brief filed 09/11/2006 appealing from the Office action mailed 05/12/2006.

(1) Real Party in Interest

A statement identifying by name the real party in interest is contained in the brief.

(2) Related Appeals and Interferences

The examiner is not aware of any related appeals, interferences, or judicial proceedings which will directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal.

(3) Status of Claims

The statement of the status of claims contained in the brief is correct.

(4) Status of Amendments After Final

The appellant's statement of the status of amendments after final rejection contained in the brief is correct.

(5) Summary of Claimed Subject Matter

The summary of claimed subject matter contained in the brief is correct.

(6) Grounds of Rejection to be Reviewed on Appeal

The appellant's statement of the grounds of rejection to be reviewed on appeal is correct.

(7) Claims Appendix

The copy of the appealed claims contained in the Appendix to the brief is correct.

(8) Evidence Relied Upon:

6,795,867	Ma et al.	09-2004
6,772,333	Brendel	10-2004

9) Grounds of Rejection

The following ground(s) of rejection are applicable to the appealed claims:

Claims 1-17 are rejected under 35 U.S.C. 103(a) as being unpatentable over Ma et al. (U.S. Patent Number 6,795,867) hereinafter referred to as Ma in view of Brendel (U.S. Patent Number 6,772,333).

As per claims 1, 2, 7-14, and 16 Ma disclosed a method/system for processing messages incoming on a gatekeeper system of an Internet Protocol network, [Abstract, Figs. 3A-4, Column 2, Lines 35-65, Column 4, Lines 30-39, Ma disclosed a Load Management Unit within a gatekeeper hereinafter referred to as LMU in a gatekeeper system

processing calls in IP voice telephony] wherein the gatekeeper system includes a plurality of sub-processes each able to process a series of such messages, [Figs. 3A-3B, (302-306 and 352-356), Column 7, Lines 32-61] the method comprising the gatekeeper receiving incoming messages [see Ma, Column 2, Lines 16-40 and Lines 46-48]; and the gatekeeper dispatching received messages among the plurality of sub-processes, wherein the received messages that belong to the same call are dispatched to the same sub-process [Ma, Column 7, Lines 23-42, Fig. 4, Column 8, Lines 3-63, Ma taught assigning/dispatching of a message/call to a gatekeeper process if a previously registered gatekeeper process for the call is determined (Column 8, Lines 59-63)].

Ma substantially disclosed the invention as claimed. However, Ma was silent about the details of identifying the message/call using a session identifier and directing the call to the same process that previously processed the call. However, as evidenced by the teachings of Brendel, such a technique was commonly known in the art of load balancing at the time the invention was made (see Column 2, Lines 27-50). Brendel disclosed receiving the message in an encoded form and partially decoding the message to identify the session ID that identifies the message, further examining the extracted fields of the message in order to identify the call as recited in claims 7-10, see Abstract, Column 5, Lines 45-67, Column 7, Line 25 through Column 8, Line 67, Column

9, Lines 2-27, Column 9, Line 63 through Column 10, Line 4 and Column 15, Lines 4-7, Brendel disclosed retrieving session identifies from encoded messages by partially extracting from the header information of the message).

Thus, it is respectfully submitted that it would have been obvious to one of ordinary skill in the art at the time the invention was made to take the teachings of Brendel related to analyzing session identification and load balancing in a clustered system by directing requests to the same server process that previously processed request associated with a particular session and have modified the teachings of Ma related to a clustered gatekeeper system having therein plurality of gatekeeper processes, because "when the same server receives all the users connections, then local traffic to other servers is minimized and latency is reduced" (Column 2, Lines 51-54).

As per claim 3, Ma disclosed processing the calls, which is applied in a H323 network [Column 4, Lines 40-64].

As per claim 4, wherein the messages to be dispatched are "Registration, Admission and status" (RAS) messages [Column 4, Lines 60-64].

As per claim 5, Ma disclosed identifying whether the message is a registration or an admission message, and, if the message is identified as a registration message, determining the sub-process to which the

message is going to be dispatched on the basis of the current load of the different sub-processes in order to balance the load of the different sub-processes [Column 6, Lines 45-51, Column 7, Lines 8-23].

As per claim 6, Ma disclosed identifying whether the message is a registration or an admission message, and, if the message is an admission message, determining whether the message is the first admission message of a call, and, in that case, determining the sub-process to which the message is going to be dispatched on the basis of the current load of the different sub-processes in order to balance the load of the different sub-processes [Column 6, Lines 45-51, Column 7, Lines 8-23].

As per claims 15 and 17, Ma disclosed a method/system for processing messages incoming on a gatekeeper system of an Internet Protocol network [Abstract, Figs. 3A-4, Column 2, Lines 35-65, Column 4, Lines 30-39, Ma disclosed LMU in a gatekeeper system processing calls in IP voice telephony], wherein the gatekeeper system comprises a gatekeeper and a plurality of sub-processes each able to process a series of such messages, and further wherein the messages enter the gatekeeper system [Figs. 3A-3B, (302-306 and 352-356), Column 7, Lines 32-61] in an encoded form and comprise a plurality of fields, at least one of which contains data for identifying a call, the method comprising the gatekeeper receiving incoming messages; the gatekeeper

decoding received message only partially, the decoded part including said one or several fields which contain those data; and the gatekeeper dispatching received messages that belong to the same call are dispatched to the same sub-process [Fig. 4, Column 7, Lines 23-42, Column 8, Lines 3-63, Ma taught assigning/dispatching of a message/call to a gatekeeper process if a previously registered gatekeeper process for the call is determined (Column 8, Lines 59-63)].

Ma substantially disclosed the invention as claimed. However, Ma was silent about the details of receiving encoded message and decoding partially (the header information of a message) identifying the message/call using a session identifier and directing the call to the same process that previously processed the call. However, as evidenced by the teachings of Brendel, such a technique was commonly known in the art of load balancing at the time the invention was made (see Column 2, Lines 27-50). Furthermore, Brendel disclosed receiving the message in an encoded form and partially decoding the message to identify the session ID that identifies the message (Column 5, Lines 45-67, Column 7, Line 25 through Column 8, Line 67 and Column 15, Lines 4-7).

Thus, it is respectfully submitted that it would have been obvious to one of ordinary skill in the art at the time the invention was made to take the teachings of Brendel related to analyzing session identification and load balancing in a clustered system by directing requests to the

same server process that previously processed request associated with a particular session and have modified the teachings of Ma related to a clustered gatekeeper system having therein plurality of gatekeeper processes, because "when the same server receives all the users connections, then local traffic to other servers is minimized and latency is reduced" (Column 2, Lines 51-54).

(10) Response to Argument

a. Appellant asserts, *"Ma does not disclose "the gatekeeper receiving incoming messages; and the gatekeeper dispatching received messages among the plurality of sub-processes"* (Appellant's Remark, Page 5, ¶3, ¶Lines 4-6).

In response to appellant's argument, the examiner respectfully disagrees with appellant's contention. Ma disclosed assigning received message to an appropriate gatekeeper based on which gatekeeper previously processed a received message and based on the originating or source and or session of the call information and/or load and functional status of the gatekeeper that processes the messages received (Ma, Column 2, Lines 16-40) and as the inventive entity has already

appreciated/acknowledged a functional limitation (Last received on 02/09/2006, Remark, Page 7, Lines 1-5), Ma disclosed receiving incoming message and dispatched messages to plurality of gatekeeper processes (see Ma, Column 2, Lines 46-48: **"...redirecting calls from an assigned Gatekeeper to a servicing Gatekeeper..."**). Examiner note appellant's concern that it is the LMU that directs the messages received to an appropriate gatekeeper. However, the LMU is within each gatekeeper as disclosed in another embodiments (Figs. 1-3, showing gatekeepers having therein LMU's). Ma's gatekeeper(s) has embedded LMU (Load Management Unit). Ma disclosed assigning received message from a gatekeeper to an appropriate gatekeeper process on a call-by-call basis [Ma, Fig. 3A and Column 7, Lines 1-61, Column 7, Lines 23-42, Fig. 4, Column 8, Lines 3-63, Ma taught assigning/dispatching of a message/call to a gatekeeper process if a previously registered gatekeeper process for the call is determined (Column 8, Lines 59-63)]. Furthermore, Ma disclosed plurality of Gatekeeper processes 1-N processing messages received thereon. See Fig. 3B disclosed below. The LMU is securing (performing the act of "gatekeeping") an entrance of incoming calls and forwarding the received call to be processes by a determined one of the plurality of gatekeeper instances (gatekeeper 1 through gatekeeper N) as disclosed below in Fig. 3B.

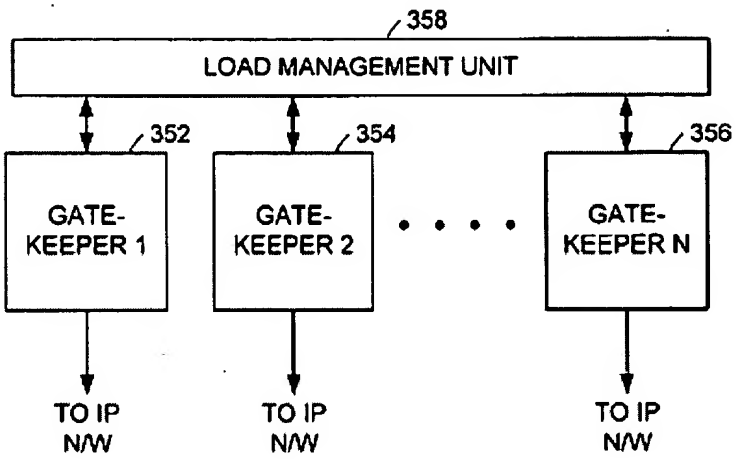

FIG. 3B

b. Appellant recites *"Ma's gateway does not disclose the "gatekeeper" as recited in Claim 1, because Ma's gateway does not dispatch received "incoming messages" as recited in Claim 1. According to Ma, the gateway receives a request from an endpoint that is trying to initiate a call"* (Appellant's Remark, Page 6, ¶1, ¶Lines 3-6).

In response to applicant's concern, for purposes of clarification, the examiner likes to point that the essential use of the gateway as it is well known in the are and as also evidenced by the teachings of Ma's figure 1 below, is interpretation of protocols between the incompatible communication protocols such as the conventional PSTN (Public Switched Telephone Network) and the IP network (VOIP). The gateway (#106) interprets protocols between different networks.

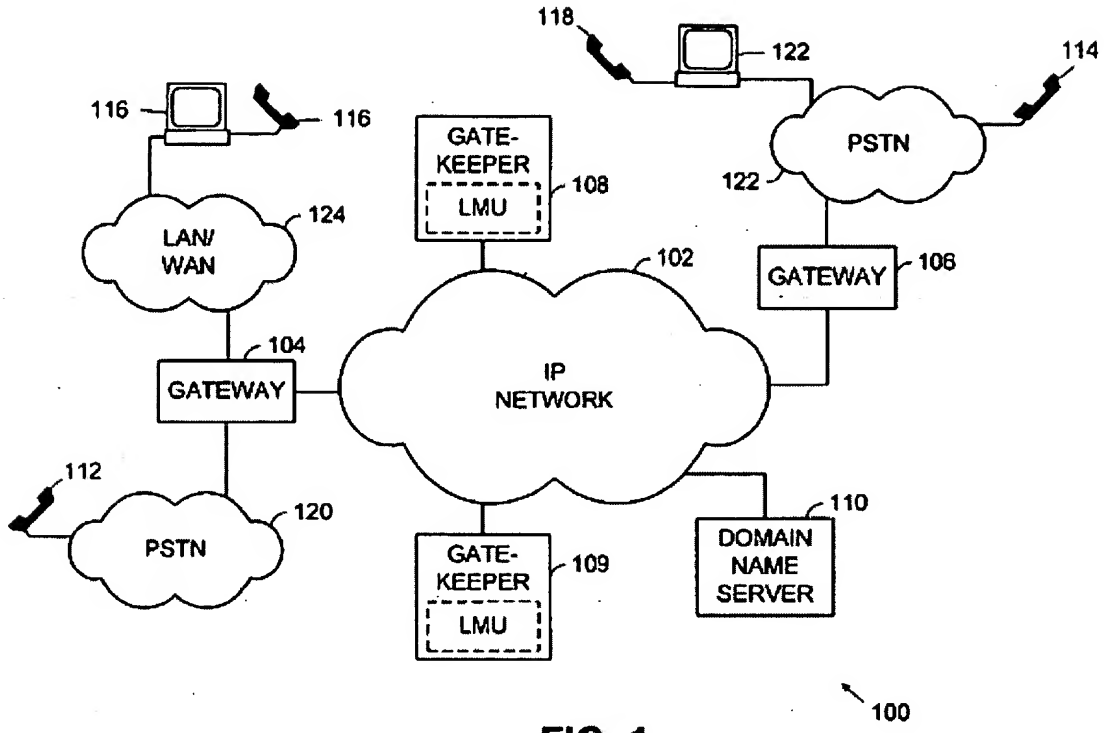

FIG. 1

Having that said, in a full IP based telephony network or VOIP, it is apparent that there is no use or need of the gateway, since callers are directly connected to the IP network. In either situation, the call initiated by a caller is routed to an appropriate gatekeeper via appropriate routs using the plurality of routers in the IP network [see Ma, Fig. 2 (disclosed below), # caller 244 directly connected to the IP network].

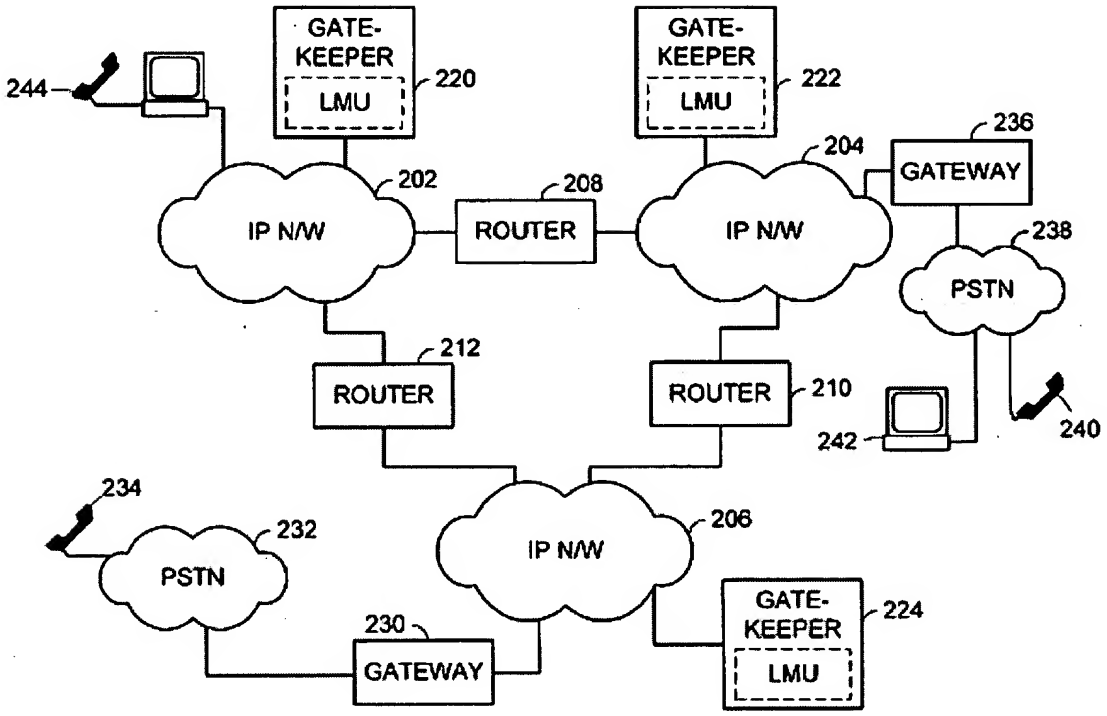

FIG. 2

Thus, appellant's argument asserting that *"Ma's gateway does not disclose the "gatekeeper" as recited in Claim 1, because Ma's gateway does not dispatch received "incoming messages" is* invalid, because as discussed above the functionality of the gateway as disclosed by Ma is to enable communication between dissimilar networks. It should be prized that Ma clearly disclosed at least two embodiments, where one is clearly showing plurality of gatekeepers receiving calls to be processed as disclosed above in Fig. 2, which is also conventionally recognized in the

packet based telephony network, but Ma also clearly disclosed in a different embodiment an LMU acting as an entry point and dispatching calls to the plurality of gatekeepers as shown above in Fig. 3B and Column 7, Lines 1-61.

Furthermore, in Fig. 4 (also disclosed below), a gateway sends setup message to assigned gatekeeper (note: the presence of the gateway is merely because we have both PSTN and VOIP network communicating as pointed out above), the gatekeeper passes the message to a LMU (which is embedded within the gatekeeper as shown above and Column 6, Lines 45-49, "respective Gatekeeper serves each of the three IP networks 202, 204 and 206. As is shown Gatekeepers 220, 222 and 224 serve IP networks 202, 204 and 206 respectively. The Gatekeepers 220, 222 and 224 are constructed to have on-board LMUs (as is shown) or to be coupled to one or more LMUs to perform call redirection according to the present invention."); the LMU then selects appropriate gatekeeper from the plurality of gatekeeper instances to service the call.

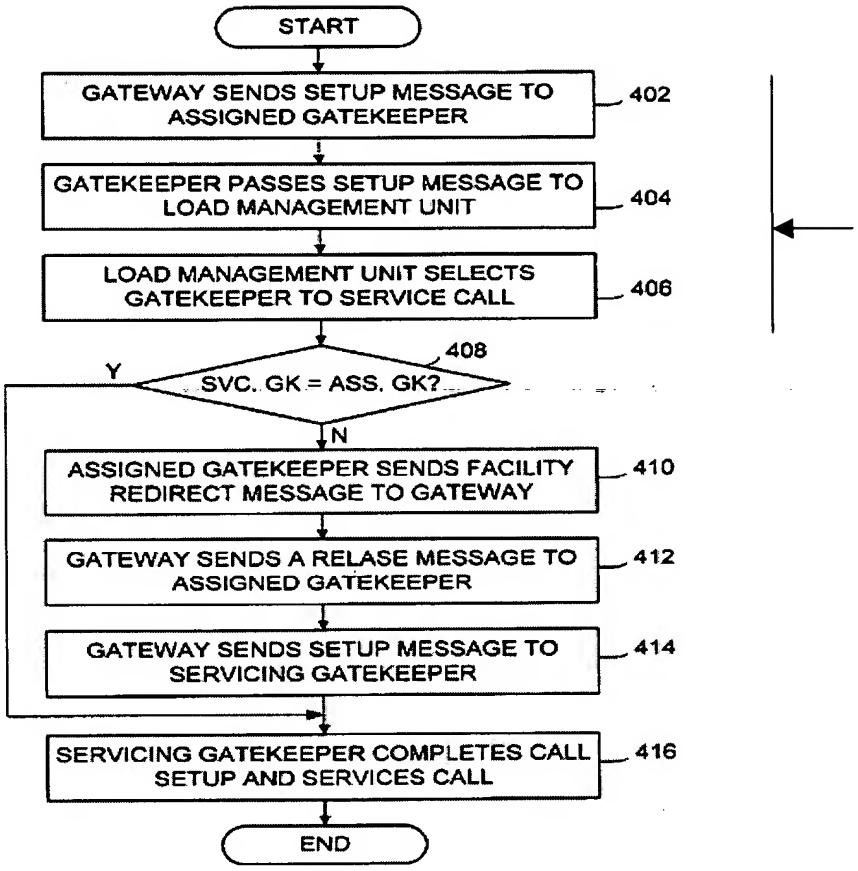

FIG. 4

c. Appellant alleges, *"the Examiner's interpretation of Ma is based solely upon a hindsight reconstruction of Applicant's claims as opposed to what Ma really teaches"* (Appellant's Remark, Page 10, ¶1, ¶Lines 1-2).

In response to applicant's argument that the examiner's conclusion of obviousness is based upon improper hindsight reasoning, it must be recognized that any judgment on obviousness is in a sense necessarily a reconstruction based upon hindsight reasoning. But so long as it takes into account only knowledge which was within the level of ordinary skill

at the time the claimed invention was made, and does not include knowledge gleaned only from the applicant's disclosure, such a reconstruction is proper. See *In re McLaughlin*, 443 F.2d 1392, 170 USPQ 209 (CCPA 1971).

First of the appellant does not specifically point out the error or the nature of the alleged "improper hindsight reasoning" in the office action. It is examiner's position that the allegation is without any factual evidence simply for the purpose of disqualifying the prior art of record as applied in the rejection. Furthermore, since the teachings of the applied prior art and the claimed novelty are indistinguishable, it is safe to believe that the alleged *impermissible hindsight* appears to be true to the appellant possibly due to the very similar nature of this instant application and the prior art or record. Proper motivation in combining the prior art of record was properly cited in the body of the claim rejection in the last office action.

(11) Related Proceeding(s) Appendix

No decision rendered by a court or the Board is identified by the examiner in the Related Appeals and Interferences section of this examiner's answer.

For the above reasons, it is believed that the rejections should be sustained.

YMG
September 25, 2006

Respectfully submitted,

Conferees:

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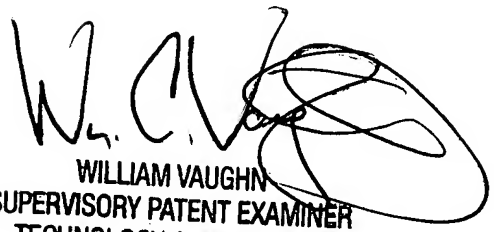

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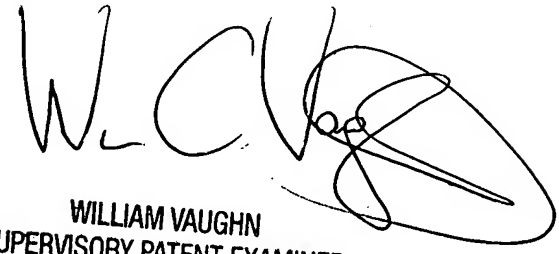

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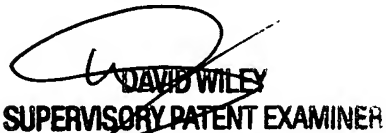

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